APPEAL NO. 041514
FILED AUGUST 13, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on May 19, 2004, with the record closing on May 26, 2004. The hearing officer resolved the disputed issue by deciding that the respondent's (claimant) correct impairment rating (IR) is 25%. The parties stipulated that the claimant's date of maximum medical improvement (MMI) is July 14, 2003. The appellant (carrier) appealed, disputing the IR determination. The appeal file does not contain a response from the claimant.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable low back injury on _____ and that Dr. E was chosen by the Texas Workers' Compensation Commission (Commission) to be the designated doctor to determine both MMI and IR. The carrier argues that none of the doctors who reviewed the rating provided by Dr. E could support an IR assessment of 25%. Further, the carrier contends that the evidence presented at the CCH established that the report of Dr. E "is so wrought with potential error that it cannot and should not be relied upon, adopted or afforded presumptive weight."

Dr. E determined that the claimant's condition warranted a rating of 25% based on Diagnosis-Related Estimate (DRE) Lumbosacral Category V of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. E stated in his report that he has "examined and reviewed appropriate MRI scans and x-rays, performed lumbar flexion-extension views, AP of the pelvis," and has examined the claimant and neurologically determined deficits and when they exist. Dr. E noted in his letter of clarification after receipt of the report from a carrier-selected doctor who performed a required medical examination (RME) that he saw no reason to adjust his IR based on the RME which was incomplete.

Section 408.125(c) provides that, for a compensable injury that occurred on or after June 17, 2001, where there is a dispute as to the IR, the report of the Commission-selected designated doctor is entitled to presumptive weight unless it is contrary to the great weight of the other medical evidence. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.6(i) (Rule 130.6(i)) provides that the designated doctor's response to a request for clarification is also considered to have presumptive weight, as it is part of the designated doctor's opinion. *See also*, Texas Workers' Compensation Commission Appeal No. 013042-s, decided January 17, 2002. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor was a factual question for the hearing officer to resolve. When reviewing a hearing officer's decision

for factual sufficiency of the evidence we should reverse such decision only if it is so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Accordingly, we cannot agree that the hearing officer erred in granting presumptive weight to Dr. E's report.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

RUSSELL OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Daniel R. Barry
Appeals Judge

_____
Thomas A. Knapp
Appeals Judge